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Supreme Court, U.S.
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No.:

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1991

JOSEPH CARL DICKERSON and
MARY ELIZABETH DICKERSON,

PETITIONERS,

v.

THE UNITED STATES OF AMERICA and
UNNAMED JOHN DOES,

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Joseph Carl Dickerson
Mary Elizabeth Dickerson
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Pro se

QUESTIONS PRESENTED

1. Whether the lower Court erred in granting the defendant its motion for summary judgment and dismissed plaintiffs action, when the defendant failed to follow congressionally mandated procedure by not producing statutes which are the only required notices, before, levying and collecting plaintiffs property and by filing liens on plaintiffs properties?

2. Whether the lower Court erred in granting the defendant its motion for summary judgment and dismissed plaintiffs action, without giving plaintiffs an evidentiary hearing and/or trial?

3. Whether the lower Court erred in granting the defendant its motion for summary judgment and dismissed plaintiffs action, without completeing discovery action?

4. Whether the lower Court erred in granting the defendant its motion for summary judgment and dismissed plaintiffs action, when a violation of the Fourth Amendment to the United States Constitution was violated?

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IN THE SUPREME COURT OF THE
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OCTOBER TERM, 1991

JOSEPH CARL DICKERSON and
MARY ELIZABETH DICKERSON

PETITIONERS,

v.

THE UNITED STATES OF AMERICA
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RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TO: THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioners, Joseph Carl Dickerson and Mary Elizabeth Dickerson, respectfully pray; that a writ of certiorari issue to review the Per Curiam judgment of the United States Court of Appeals for the Sixth Circuit entered on February 27, 1992. Appellants then petitioned the court for a

rehearing filed March 10, 1992 and denied by Appeals Court on March 31, 1992. This petition for writ of certiorari has been timely filed.

OPINIONS BELOW

On February 27, 1992, the United States Court of Appeals For The Sixth Circuit entered its Per Curiam Opinion affirming the District Court's judgment upon the reasoning set out by that court in its memorandum opinion of May 20, 1991. All orders, rulings, judgments, and other conduct of the district court in its cause was also affirmed. The District court's opinion granted the

defendant its summary judgment and dismissed plaintiffs' action. The District Court's opinion was that the defendant had followed all the statutory requirements for creating valid tax liens, thus entitling them to summary judgment on any claim by plaintiffs under 28 U.S.C. Section 2410. Therefore, there would be no unauthorized collections and unauthorized disclosures. A copy of the per curiam opinion, which is not to be published, is attached hereto as Appendix A, a copy of the denial, for petitioners rehearing, is attached hereto as Appendix B, and a copy of the judgment of the District Court is

attached hereto as Appendix C.

JURISDICTION

On February 27, 1992, the United States Court of Appeals For The Sixth Circuit entered judgment affirming the District Court's decision in dismissing the petitioners' civil action seeking declaratory and statutory relief under 26 U.S.C. 6103, 7431, 7433, 7426 and Quiet Title 28 U.S.C. 2410, 28 U.S.C. 1331, 1340, 2463, which are supported by statutes, against The United States of America and Unnamed John Does for levying and collecting plaintiffs money from their paycheck by "IRS Levy" and filing liens on their properties without first following congressionally mandated

procedures. Defendant, also, failed to show any Uniform Commercial Code Number, showing their authority to file liens on Petitioners property, in violation of the 4th Amendment to the U.S. Constitution and violating their rights.

B. Jurisdiction of this Court is invoked under Title 28, United States Code 1254 (1). (102 Stat. 662.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure."

28 U.S.C. 2410:

"Actions affecting property on which United States has a lien

(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter-

(1) to quiet title to, real or personal property on which the United States has or claims a mortgage or other lien." (As amended 63 Stat. 105, 72 Stat. 348, 74 Stat.201 & 80 Stat. 1147.)

28 U.S.C. 1331:

"Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States." (As amended 72 Stat. 415. 90 Stat. 2721, & 94 Stat. 2369.)

28 U.S.C. 1340.

"Internal revenue; customs duties

The district courts shall have original jurisdiction of any civil action arising under any Act of congress providing for internal revenue, or revenue from imports or tonnage except

matters within the jurisdiction of the Court of International Trade. 94 Stat. 1742.

28 U.S.C. 2463:

"Property taken under revenue law not repleviable

All property taken or detained under any revenue law of the United States shall not be repleviable, but shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof." (Based on title 28 U.S.C., 1940 ed. Section 747 (R.S. Section 934.)

28 U.S.C. 7426:

"Civil actions by persons other than taxpayers

(a) Actions permitted.-

(1) Wrongful levy.- If a levy has been made on property or property has been sold pursuant to a levy, any person other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district

court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary".

26 U.S.C. 7431:

"Civil damages for unauthorized disclosure of returns and return information

(a)(1) If any officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States". (96 Stat. 645, 97 Stat. 379)

26 U.S.C. 7433:

"Civil damages for certain unauthorized collection actions

(a) If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in

a district court of the United States". (102 Stat. 3747.)

STATEMENT OF THE CASE

Jurisdiction of the District Court is invoked under 28 USC 2410, 1331, 1340, 2463; 26 USCA 6103, 7426, 7431 and 7433; USCA Const. Amend 4.

The Petitioners are informed and believe, and alleged in their complaint that the Internal Revenue Service did seize their pay, file liens on their property without following congressionally mandated procedures. The Petitioners believed and alleged that unauthorized disclosures were made on the levies and liens without authority to do so. The petitioners believed and alleged that unauthorized

collections were made on their paychecks without delegated authority to do so.

The seized properties were taken without delegated authority. Petitioners have shown in their answer to the defendants motion for summary judgment filed April 25, 1991, as Record No. 55, that Internal Revenue Officers authority only exist over Alcohol, Tobacco, and Firearms.

Petitioners had not filed income tax returns for the year 1983, 1984 and 1985, prior to the seizure of their pay, because the Petitioners had read the Internal Revenue Investigation hearings report - Subcommittee of the committee on Ways and Means House of

Representatives Eighty-Third Congress First Session on Administration of the Internal Revenue Laws where Mr. Avis, said

"Your income tax is 100% voluntary tax, and your liquor tax is 100 per cent enforced tax."

Petitioners show this hearing as (Exhibit 33), filed June 28, 1992, as (Civil Record No. 65). Petitioners were not involved in Alcohol, Tobacco, or Firearms for those years or any other years.

Since, the Dickersons did not voluntarily assess themselves, they believed that there would have to be some statutory notice showing authority for the Internal Revenue Service to

assess, levy and collect and file liens on their property. No such statutes have been produced, Petitioners believe if the Internal Revenue Service had sent statutes, they could have shown the Internal Revenue Service could not have collected their pay or filed liens on their property. USCA Title 26 is not "positive law". Defendant has failed to show any statutory authority for their actions in this instant case.

The Dickersons received forms and letters from the Internal Revenue Service, but, never received any such notice that had the words statutory notice of deficiency, statutory notice of assessment and demand for payment or

statutory notice to levy and collect. The Petitioners have never received a form or letter with the words "notice and demand".

On September 5, 1989, the Internal Revenue Service served a "Notice of Levy" Form 668-W on Carrier Corp., McMinnville, TN to levy on the Petitioners property which they were to receive for their work which they had done for Carrier, return information was disclosed on the forms.

On September 18, 1989, the Internal Revenue Service filed "Notice of Liens" Form 668(Y), at the Register of Deeds, Court House, Manchester Tennessee, which had return information

disclosed on the forms.

A total of $21,111.86, was seized from the Petitioners for the years 1983, 1984 and 1985. The notice of liens only stated an amount of $13,826.19, the defendant seized $7,285.67, more than was stated on the notice of liens.

At the time Petitioners filed their suit in district court, the defendants had not seized the total amount above. But, since that time the seizure process has been completed on Joseph Dickerson and Petitioners are placing into this record the Certificate of release of federal tax lien, Form 668(Z), (EXHIBIT A), which Petitioners believe to be very important in this

case. As this Honorable Court will recognize that according to Register of Deeds Court recording dated March 18, 1991, the Internal Revenue Service says that no Uniform Commercial Code No. is available to file liens on Petitioners property. Petitioners believe that the liens and levys were wrongfully placed on the Petitioners property and that they should be awarded their requested relief.

On January 5, 1990, the Dickerson filed their complaint in the United States District Court For The Eastern District Of Tennessee. The defendant filed their answer admitting their levying, collecting and filing liens on

the Dickersons properties. Defendant admitted disclosure of information and stated they had followed procedures.

The Dickersons requested certain documents and were refused those documents by the defendant and the lower Courts. Petitioners were refused access to the same documents which the defendant had access to. Petitioners believe they have a right to see the statutes showing assessment, deficiency, notice and demand, to levy and collect and to file liens on their properties.

The defendant filed a motion for summary judgment supported by memorandum, and exhibits, but, failed to show any statutes to assess, any

deficiency, notice and demand, to levy and collect and to file liens. Plaintiffs answered defendants motion and memorandum. Plaintiffs showed a form called "notice and demand" Form 668-C, this was not sent to the plaintiffs, but to someone else, we used this to show what a Form "notice and demand" looked like. We never received anything with the words "notice and demand" written on it. On May 20, 1991, the District court affirmed the defendants motion for summary judgment and dismissed plaintiffs action. On July 5, 1991, Plaintiffs filed a Notice of Appeal with the Sixth Circuit and the Sixth Circuit on February 27, 1992,

affirmed the lower Court's decision. Petitioners filed for a rehearing on March 10, 1992, and was denied a rehearing on March 31, 1992. Petitioners believe that the income tax is voluntary and believe a statute would have to be produced showing assessment, deficiency, notice and demand payment, notice to levy and collect and file liens on their property, before, any of their property can be legally or lawfully detained. No judgment by Court or jury and no distraint warrant or notice of lien was served with the notice of levy before the seizing of the Dickersons property.

Petitioners are native born

Tennesseans and work in Tennessee.

The Petitioners have sustained grave injuries and believe that their property was taken without authority.

Petitioners argued in their brief to the Court of Appeals for the Sixth Circuit that statutes had not been produced. That statutes are the only required notices to be given. Petitioners should have been given the opportunity to prove their case by discovery pursuant to F.R.C.P. Rule 34 to produce documents that are in the possession of the defendants.

The Department of Justice Attorney for the defendant did not show any statutory notice which was the basis for

Petitioners' claim. The Petitioners alleged no statutory notices were produced and no notice and demand were produced before the seizing of their properties and substantial violation of rights.

REASONS FOR GRANTING THE WRIT

NO STATUTES AND NO DELEGATIONS ORDERS HAVE BEEN PRODUCED SHOWING: ANY AUTHORITY TO ASSESS, ANY DEFICIENCY, NOTICE AND DEMAND, TO LEVY AND COLLECT AND TO FILE LIENS. WE BELIEVE THERE TO BE NEGLIGENCE AND RECKLESSNESS IN THIS CASE, WHICH CAUSED DEPRIVATION OF PROPERTY AND INJURY TO THE FAMILY.

Certiorari should be granted for two reasons: This Petition presents an issue resolved by implication by this Court but not specifically and unequivocally decided by this Court; and

the Opinion below conflicts, by implication with previous decisions of this Court and with the decisions of other Circuits.

The Supreme Court has held that 28 USC 2410 is a waiver of sovereign immunity by the United States for those situations which it covers. United States v. John Hancock Mutual Life Insurance Co., 364 U.S. 301, 81 S. Ct. 1, 5 L.Ed.2d 1 (1960). Section 2410 of the Judicial Code reads in part:

"The United States may be named a party in and civil action or suit in any court ... to quiet title to ... real or personal property on which the United States has or claims a mortgage or other lien."

The only question, then, is whether it covers a taxpayer's suit for improper

procedure.

Petitioners have filed a Quiet Title action to remove the clouded title on their property and requested statutory and declaratory relief. This Court has implicitly stated:

"That this country's income tax system is based on voluntary self-assessment, rather than distraint". Flora v. United States, 362 U.S. 145, (1960).

On the preface of Title 26 USCA it states the following:

"Inasmuch as many of the general and permanent laws which are required to be incorporated in this Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel is engaged in a comprehensive project of revising and enacting the Code into law, title by title. Since 1947, bills have been enacted to revise, codify and enact into law Titles 1,3,4,5,6,9,10,13,14, 18,23,28,32,35,37,38,39, and 44. In addition, bills relating to other titles

are also being prepared for introduction. When this work is completed all the titles of the Code will be legal evidence of the general and permanent law and recourse to the numerous volumes of the Statutes at Large for this purpose will be unnecessary".

As this Honorable Court can see, Title 26, has not been enacted into "positive law". It is Petitioners belief that statutes would have to be produced in this instant case showing defendants authority to levy and collect Petitioners property.

The Court in Anderson v. United States, 15 F. Supp. 225, citing Meyersdale Fuel Co. v. United States,, 44 F.2d 437, 70 Ct.Cl. 765, 783 and Crompton & Knowles Loom Works v. White (C.C.A.) 65 F.2d 132, stated:

"The assessment contemplated by and referred to in the statute is the assessment by the Commissioner of the tax". (Emphasis added.)

Also,

This Court in Cincinnati, N.O. & T.P. R. Co. v. Kentucky (Kentucky Railroad Tax Cases) 115 US 321, 6 S.Ct. 57, stated:

"Notice by statute is the only notice given or required for the levying and collecting the public revenues". (Emphasis added.)

Petitioners believe, statutes would have to be produced by the defendants, before any property could be taken or any liens filed on their property, since Petitioners had not voluntarily filed returns and the defendant failed to execute returns for

them.

In Laing v. United States, 423 U.S. 161, 96 S.Ct. 473 (1976), this Court stated:

"Deficiency does not arise until tax is actually due". (Emphasis added.)

Defendants have not produced any statute showing the Dickersons owe any tax. The IRS cannot use deficiency procedures when a return, voluntary or involuntary, has not been duly executed, certified and filed. Without such return, a deficiency does not, cannot, exist. "The IRS is required to follow certain procedures in assessing the liability of a taxpayer before it can bring a civil suit to enforce a collection of the tax

due, 26 USC 6020(b), 6201; 26 CFR 301.6020-1, 301.6201-1 United States v. Kelly, 539 F.2d 1199 (9th Cir. 1976). Petitioners had not filed "income tax returns" for those years and the defendants have also admitted in their answer to petitioners interrogatories that they did not execute returns for the Dickersons for those years in question. Since, the Dickersons had not voluntarily assessed themselves, and the defendants has shown no statutes showing any assessment and the defendants have not executed any valid returns for the Dickersons, the Dickersons believe according to Laing v. United States, supra, that no tax is

actually due from the Dickersons.

For the condition precedent of liability to be met, there must be a lawful assessment, either a voluntary one by the taxpayer or one procedurally proper by the IRS. Bothke v. Flour, 713 F.2d 1405 (9th Cir. 1983).

By its own language, the exemptions thereto, e.g., 6212(a) and 6213(a), and 7426(a) and the language of 6213(a), the Anti-Injunction Act does not apply to a taxpayer's suit to enjoin a levy imposed when the IRS violates congressionally-mandated procedures. The Ninth Circuit in the case of Jensen v. IRS, 835 F.2d 196 (9th Cir. 1987) said:

"Once a taxpayer satisfies one of the statutory exceptions to the Act, he is no longer jurisdictionally barred from seeking an injunction. See Perlowin v. Sassi, 711 F.2d 910, 911 (9th Cir. 1983). Here, the IRS' failure to comply with the notice provisions of 26 U.S.C. 6212(a) and 6213(a) before levying on Jenson's wages constitutes an exemption to the Act. Section 6213(a) expressly provides that a levy may be enjoined 'notwithstanding the provisions of section 7421(a).' The district court had jurisdiction to hear Jensen's suit. See Laing v. United States, 423 U.S. 161, 184 n. 27 (1975); Perlowin, 711 f.2d at 911."

Plaintiffs were clearly entitled to a valid section 6212 statutory notice of deficiency and did not get it. Therefore, the Anti-Injunction Act is no barrier to their suit.

Courts which have characterized suits against a lien or levy, like the present one, as a quiet title action

have also seen no barrier to them in the Anti-Injunction Act. A quiet title action simply is not a suit to restrain the assessment or collection of tax. Otherwise, section 2410, which was enacted well after the original Anti-Injunction Act, would be impossible to reconcile with section 7421. Aqua, 539 F.2d at 940; Coson, 286 F.2d at 468-469. The Coson Court said:

> "We agree with the holding of the trial court that the prohibition against suits to restrain collection or assessment of taxes has no bearing upon this case which is one for a wholly different purpose. We think it plain that the only type of relief needed here is a decree holding the tax lien a cloud on plaintiff's title and canceling it. There is no need for any injunctive relief. We hold that the court below had jurisdiction." Coson, 286 F.2d at 459.

It should be noted that the Coson Court did not rule out injunctive relief. See Coson, 286 F.2d 459 n. 9.

The Ninth Circuit recently addressed a statutory notice of deficiency that had been issued in violation of section 6212(a). The IRS had violated congressionally-mandated procedures by failing to determine that a deficiency existed before issuing a notice of deficiency. Scar v. C.I.R., 814 f.2d 1363 (9th Cir. 1987). "It is not the existence of a deficiency but the Commissioner's determination of a deficiency that provides a predicate for Tax Court jurisdiction." Scar, 814 F.2d at 1369 n. 10. "Jurisdiction is at

issue here. Failure to comply with statutory requirements renders the deficiency notice null and void ... ." Scar, 814 F.2d at 1370. No Statute has been produced in Petitioners case.

The Tax Court has jurisdiction only when the commissioner issues a valid statutory deficiency notice, and the taxpayer files a timely petition for redetermination. Scar, 814 F.2d at 1366. "A valid petition is the basis of the Tax court's jurisdiction. To be valid, a petition must be filed from a valid statutory notice." Scar, 814 F.2d at 1366.

"The Ninth Circuit has already established that a section 2410 suit is

an express waiver of sovereign immunity, when congressionally-mandated procedures are violated, in the case of United States v. Coson, 286 F.2d 453 (9th Cir. 1961). The Coson Court stated:

> "It will be noted that out decision here is based upon our holding that the Government's lien was irregular, insufficient and valueless from a procedural standpoint for failure to serve the statutory notice and demand in connection therewith and for failure to comply with required procedures." Coson, 286 F.2d at 463. (Emphasis added.)

The Colson Court also established 28 USC 1340 as giving district courts original jurisdiction of a civil action where the issue involves the validity of the federal tax lien. The combination of sections 1340 and 2410, 28 USC, have been cited by numerous federal courts to

firmly establish that an unequivocable waiver of sovereign immunity exists pursuant to section 2410 and subject matter jurisdiction has been granted pursuant to section 1340, when the taxpayer questions only the validity of the procedures used to enforce a tax lien or levy and not the validity of the tax assessment itself. See United States v. Coson, supra; Aqua Bar & Lounge, Inc. v. United States Department of Treasury, 539 F.2d 935, 939-940 (3rd Cir. 1976); Reese v. Scoggins, 506 F.2d 967 (5th Cir. 1975); Pollack v. United States, 819 F.2d 144 (6th Cir. 1987).

In addition, the Supreme Court has extended the exception in the Anti-

Injunction Act to cases where the levy was made without the section 6303(a) notice of assessment and demand for tax required by section 6331. In Shapiro, the IRS had made a jeopardy assessment and levy which the taxpayer alleged had been issued without notice and demand for tax. The Court, stated that compliance with the notice and demand procedure was necessary if the Anti-Injunction Act were to apply. Otherwise, section 6213(a) would permit suit. Shapiro, 424 U.S. at 617-619 n.7, 96 S.Ct. at 1066-67, 1068 n. 7. Accord, United States v. Associates Commercial Corp., 721 F.2d 1094, 1098, 1100 (7th Cir. 1983) (failure to provide

statutorily required notice bars collection by distraint or by civil proceeding.

Title 26 USC Section 7426(a)(1) provides:

"If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. * *

This section does apply when the Petitioners' are only challenging the procedural aspects of tax liens, and not the merits of the underlying tax assessment. See, Arford v. United States, 934 F.2d 229 (9th Cir. 1991), citing Elias v. Connett, 908 F.2d 521,

527 (9th Cir. 1990); United States v. Coson, 286 F.2d 453, 456 (9th Cir. 1961).

This Court in Cincinnati Railroad Cases supra, stated that:

"Notice by statute is the only notice given or required for the levying and collecting the public revenues". Cincinnati N.O. & T.P.R. Co. v. Kentucky (Kentucky Railroad Cases) 115 US 321, 6 S. Ct. 57. (Emphasis added.)

Title 26 USC 7433(a) provides:

"If, in connection with any collection of Federal Tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally disregards any provisions of [the Internal Revenue Code], such taxpayer may bring a civil action for damages against the United States in a district court of the United States".

(b) Damages. In any action brought under subsection

(a), upon a finding of liability on the part of the defendant, the

defendant shall be liable to the plaintiff in an amount equal to the lesser of $100,000 or the sum of--

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the officer or employee, and

(2) the costs of the action.

(c) Payment authority.__ Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of Title 31, United States Code.

(d) A judgment for damages shall not be awarded ***

unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service". (102 Stat. 3747.)

Petitioners have shown in their statement of the case that Title 26 Section 7608, shows the Internal Revenue Service has only authority over Alcohol, Tobacco and Firearms. Therefore, no such authority exist and they have shown

no statute giving any authority in this instant case.

The Court in United States v. O'Dell, 160 F.2d 304, 307, stated:

"Levy is not effected by mere notice".

The Court also referred to other cases and said that:

> "The method followed in the cases is that of issuing warrants of distraint, making the bank a party, and serving with the notice of levy copy of the warrants of distraint and notice of lien". Citing Cf. Commonwealth Bank v. United States, 115 F.2d 327.

The Court in Hoover, Inc. v. McCullough Industries, Inc. 351 F. Supp. 1024, 1030, citing the Supreme Court in Beebe v. Russell, 19 Howard

283, 60 U.S. 283, 15 L.Ed. 668 (1857), which held:

"that a decree is final only when it "finally decides and disposes of the whole merits of the cause and reserves no further question or directions for the future judgment of the court. . . ." Id. at 283.

And, the Court goes on to say that

"inasmuch as the judgment was not final until October 11, 1965, a levy attempted by the Government upon an alleged indebtedness previous to the date of the final judgment makes the notice of levy invalid".

Defendants in the Dickersons case failed to get a final judgment, failed to issue a warrant of distraint and failed to serve a notice of tax lien with the notice of levy, which according to the Supreme Court would automatic make the notice of levy invalid

according to the cases just cited.

The Petitioners did have a claim under 26 U.S.C. Section 7431, since the defendant made unauthorized disclosures. These claims are correct and since proper procedures were not followed the disclosures were not authorized. 26 USCA Section 7431(a) states:

"If any officer or employee of the united states knowingly or by reason of negligence, discloses any return or return information with respect to a taxpayer may bring a civil action for damages against the United States in a district court of the United States."

The disclosures were made on Form 668(Y), notice of lien and Form 668-W, notice of levy. But, no return was ever executed by Petitioners or the defendant. The information was gathered

from a Form W-2 and Form 1099, from Carrier Corporation and from unemployment compensation. This disclosed information concerned the Dickersons. 26 USCA Section 7431(c) provides:

(c) Damages.- In any action brought under subsection
(a), upon finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of___
(1) the greater of __
(A) $1,000 for each act of unauthorized disclosure of a return or return information with respect to which such defendant is found liable, or
(B) the sum of __
(i) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure, plus
(ii) in the case of a willful disclosure or a disclosure which is the result of gross negligence punitive damages, plus
(2) the costs of the action
(96 Stat. 645, 97 Stat. 379.)

The Dickersons suffered personal embarrassment because of the defendants action. The defendant had been previously notified that procedures had not been followed and that a possible disclosure suit would be brought if any levy or lien action occured. The Court of Appeals 2d Cir. has said

"We conclude that a disclosure in pursuance of an unlawful levy violates the confidentiality requirements of section 6103(a) and is not authorized under section 6103(k)(6)". Rorex v. Traynor, 771 F2d 383 (1985).

Also, this Honorable Court has also ruled that

"An execution can be of no validity which has no judgment to support it." Clements v. Berry, 52 US 398, 11 How. 398, 13 L.Ed. 745.

The petitioners have alleged and the defendant has admitted in their answers to petitioners interrogatories that no judgment has ever been decided in this instant case, before, the seizing of petitioners property.

The Opinion of the Sixth Circuit Court of Appeals was a Per Curiam Opinion. Petitioners found a State Supreme Court case from the Pennsylvania area, Clarke et al. v. Western Assur. Co. of Toronto, Jan. 4. 1892, Atlantic Reporter, Vol. 23 at page 248, 249, which the Court said in that case:

"It is true this is criticized as only a per curiam opinion, but why it should have less weight for that reason is not clear". (Emphasis added.)

Petitioners request this Honorable Court to look further at their case, since, the opinion of the Sixth Circuit Court of Appeals in their case was a Per Curiam Opinion which according to the case supra, would have less weight.

Petitioners are attaching an Order from the Sixth Circuit Court of Appeals, concerning David L. Williams v. United State of America, Case No. 89-5740, filed April 17, 1990. This case shows procedural defects in a similar case. Petitioners Dickerson, are challenging the fact that no statutes were produced in their case. Petitioners have shown facts in their complaint,

amended complaint, their request for Internal Revenue Manuals and their response to defendants motion for summary judgment. GSA v. Benson, 415 F.2d 878 (9th Cir. 1969), this Court said,

"As to the manual and code books, then, a question of fact has clearly been presented, and a motion to dismiss under Civ. R. 12(b) cannot be granted." GSA v. Benson, supra was cited in Long v. United States Internal Revenue Service 339 Supp. 1266 (1971). (Emphasis added.)

The opinion of the 10th Circuit in the 1990 case of Riggs v. City of Albuquerque 916 F2d 852, 857, where the Circuit said

"Dismissal prior to discovery would be inequitqable under these facts because plaintiffs have alleged a direct harm caused by defendants' actions. Their suit should be heard

unless, after they have had an opportunity to develop the facts, they cannot prove any set of facts that would supply a basis for the plaintiffs' allegations, there will be time enough later for the court to consider whether sanctions are warranted." (Emphasis added.)

Petitioners were not given the discovery which they requested through interrogatories, they believe they could have proven that the defendant did not follow congressionally mandated procedures. Petitioners believe the lower Courts erred by failing to give the discovery requested which the Court cited above, stated that a request for manuals are <u>facts</u>. Petitioners believe by the Courts decisions above, defendants motion for summary judgment should not have been granted.

Petitioners believe the lower Court should not have dismissed their action, since they have shown facts. The facts are no statutes have been shown and a request for delegation orders and manuals have been requested by discovery.

Defendants have failed to show their authority under the Uniform Commercial Code, to file liens on Petitioners property. Petitioners believe this constitutes an unauthorized collection action.

In discussing the Fourth Amendment to the United States Constitution, this Honorable Court said

"It has always been recognized in this country, and is well to remember,

that few if any of the of the people are of greater importance to their happiness and safety than the right to be exempt from all unauthorized, arbitrary or unreasonable inquiries and disclosures in respect of their personal and private affairs." (Sinclair vs United States, 279 US 135, 178. (Emphasis added.)

The Petitioners are people and are not a corporation and we believe we have a right to our privacy and our property, where corporations may not. Since, Petitioners had not voluntarily filed returns. Petitioners, believe defendant had to show statutory authority to levy and collect, See Cincinnati v. Kentucky Railroad cases supra. Petitioners also, believe that if statutes had been produced they could have proved that no legal or lawful levy

or lien could exist and this case would not existed.

Defendant failed to show any Uniform Commercial Code No., which would give them authority to file any lien on Petitioners property. Therefore, Petitioners believe the defendant has failed to show any authority to levy and collect their property. Also, see Cincinnati Railroad Case above, where this Honorable Court said, Statutes are the only notices required to be sent.

Petitioners believe this Court should grant certiorari here based upon decisions of the Supreme Court, other Circuit Courts and State Courts decisions and even the Sixth Circuit

Courts decisions, which have ruled differently in this instant case. See these following cases which have ruled differently, Anderson v.United States, 15 F. Supp. 225, (1936); Aqua Bar & Lounge, Inc. v. United States Department of Treasury, 539 F.2d 935-939-40 (3rd Cir. 1976); Arford v. United States 934 F.2d 229 (9th Cir. 1991); Beebe v. Russell 19 Howard 283, 60 US 263, 15 L.Ed. 668; Bothe v. Flour 713 F.2d 1405 (9th Cir. 1983); Cincinnati N.O. & T.P.R. Co. v. Kentucky (Kentucky Railroad Cases 115 US 321, 6 S.Ct. 57; Clark et al v. Western Assur. Co of Toronto January 4, 1892, Atlantic Reporter, Vol. 23 at page 248, 249;

Clements v. Berry, 52 US 398, 11 How. 398, 13 L.Ed. 745; Cf. Commonwealth Bank v. United States 115 F.2d 327, 6th Cir.; Crompton & Knowles Loom Works v. White 85 F.2d 132; Elias v. Connett 908 F2d 521, 527 (9th Cir. 1990); Flora v. United States 362 U.S. 145, (1980); GSA v Benson 415 F2d 878 (9th Cir. 1969); Hoover, Inc. v. McCullough Industries, Inc 351 F. Supp. 1024, 1030 (1972); Jenson v. IRS 835 F2d 196 (9th Cir. 1987); Laing v United States 423 US 161, 96 S.Ct. 473 (1976); Meyersdale Fuel Co. v. United States 44 F2d 437, 70 Ct. Cl. 765 783; Pollack v. United States 819 F2d 144 (6th Cir. 1987); Reese v. Scoggins 506 F2d 967 (5th Cir. 1975);

Riggs v. City of Albuguerque 916 F2d 652, 657; Rorex v. Traynor 771 F2d 383 (1985); Scar v C.I.R 814 F2d 1370; Shapiro 424 US at 617-619 n.7, 96 S.Ct. at 1066-67, 1066 n.7; Sinclair vs United States 279 US 135, 178; United States v. John Hancock Mutual Life Insurance Co. 364 US 301, 61 S.Ct. 1, 5 L.Ed2d 1 (1960); United States v. Kelly 539 F2d 1199 (9th Cir. 1976); United States v. Coson 286 F2d at 453, 468-469 (9th Cir.); United States v. Associates Commercial Corp 721 F.2d 1094, 1098 (7th Cir. 1963); United States v. O'Dell 160 F.2d 304, 307 (6th Cir. 1947); Williams v United States of America Case No. 69-5740 (6th Cir. 1990).

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter. If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals for redetermination in light of this Court's opinion in the above cited cases.

DATED: June 17th, 1992.

Respectfully submitted,

Joseph Carl Dickerson

JOSEPH CARL DICKERSON
Pro se

Mary Elizabeth Dickerson

MARY ELIZABETH DICKERSON
Pro se

PUBLISHER'S NOTE

THE FOLLOWING PAGE IS UNAVAILABLE FOR FILMING 1a

PUBLISHER'S NOTE

THE FOLLOWING PAGE IS UNAVAILABLE
FOR FILMING 2a

PUBLISHER'S NOTE

THE FOLLOWING PAGE IS UNAVAILABLE FOR FILMING 3a

Form 668(Z) (Rev. Jan. 1994)

Department of the Treasury - Internal Revenue Service

Certificate of Release of Federal Tax Lien

District	Serial Number	For Optional Use by Recording Office
Nashville, TN	478[illegible]54	

I certify that as to the following named taxpayer, the requirements of section 6325 (a) of the Internal Revenue Code have been satisfied for the taxes listed below and for all statutory additions. Therefore, the lien provided by Code section 6321 for these taxes and additions has been released. The proper officer in the office where the notice of internal revenue tax lien was filed on September 15, 1990, is authorized to note the books to show the release of the lien for these taxes and additions.

Name of Taxpayer: JOSEPH EARL DICKERSON

Residence: RT 1 BOX 976
HILLSBORO, TN 37342-9801

COURT RECORDING INFORMATION:
Liber: 1 Page: 258 UCC No.: n/a Serial No.: n/a

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/83	414-66-2125	02/22/88	03/23/98	2120.04
1040	12/31/84	414-66-2125	05/09/88	06/08/98	6986.04
1040	12/31/85	414-66-2125	01/09/89	02/08/99	2239.99

Place of Filing:
Register of Deeds
Coffee County
Manchester, TN 37355

Total: $ 11346.07

This certificate was prepared and signed at Nashville, TN on this the 18th day of March, 19 91.

Signature: [signature] Title: (615) 736-5739

[illegible]

Form 668(Z)(Rev. 3-94)

EXHIBIT A

NOT RECOMMENDED
FOR PUBLICATION

No. 91-5858

FILED
FEB 27 1992

LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOSEPH CARL DICKERSON & MARY ELIZABETH DICKERSON,	)
Plaintiffs-Appellants,	)
v.	)
UNITED STATES OF AMERICA,	)
Defendant-Appellee.	)

NOT RECOMMENDED FOR FULL TEXT
PUBLICATION

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed if this decision is reproduced.

APPENDIX A

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE.

BEFORE: GUY, NORRIS, and BATCHELDER, Circuit Judges.

PER CURIAM. Plaintiffs, Joseph Carl Dickerson and Mary Elizabeth Dickerson, appeal from various orders of the district court, including the one which granted summary judgment for defendant and dismissed plaintiffs' action.

Having carefully considered the record on appeal and the briefs of the parties, we conclude that

the district court did not err in granting summary judgment to defendant. Furthermore, the other issues raised by plaintiffs are totally without merit.

As the reasons why judgment should be entered for defendant have been articulated by the district court, the issuance of a written opinion by this court would be duplicative and serve no useful purpose. Accordingly, the judgment of the district court is affirmed upon the reasoning set out by that court in its memorandum opinion of

May 20., 1991. All orders, rulings, judgments, and other conduct of the district court in this cause are affirmed.

We come now to the request of defendant that damages be awarded as the result of its having been required to defendant a frivolous appeal. The court determines that the appeal is frivolous and, pursuant to Fed. R. App. P. 38, awards damages to defendant in the amount of $500 together with single costs.

ISSUED AS MANDATE: 4/8/92
COSTS: $529.12

FILING FEE.....$
PRINTING.....$
TOTAL.....$

A TRUE COPY
Attest:
LEONARD GREEN, CLERK

By Diane Schnur
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
(stamped)

Case No: 91-5858

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED MAR 31 1992
LEONARD GREEN, Clerk

ORDER

JOSEPH CARL DICKERSON;
MARY ELIZABETH DICKERSON

Plaintiffs - Appellants

v.

UNITED STATES OF AMERICA

Defendant - Appellee

APPENDIX B

BEFORE: GUY, NORRIS and BATCHELDER, Circuit Judges.

Upon consideration of the petition for rehearing filed by the pro se appellants',

It is ORDERED that the petition for rehearing be, and it hereby is, DENIED.

ENTERED BY ORDER OF THE COURT

Leonard Green
Leonard Green, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN
DISTRICT OF TENNESSEE
WINCHESTER DIVISION

FILED

May 20 8 14 AM'91
U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY KJ DEP. CLERK

JOSEPH CARL DICKERSON and wife, MARY ELIZABETH DICKERSON,

Plaintiffs

v.

UNITED STATES OF AMERICA,

Defendants

APPENDIX C

MEMORANDUM OPINION

This is an action by two pro se tax protesters, Joseph and Mary Dickerson, in which they contend that the IRS wrongfully levied on their wages from The Carrier Corporation and made unauthorized and illegal disclosures of their return and/or return information on September 5 and 18, 1989. They also seek to quiet title to various real and personal property subject to the liens of the IRS. Although many of the voluminous pleadings plaintiffs have filed are confusing

and difficult to understand, it does not appear that plaintiffs challenge the underlying tax liabilities. Rather, they challenge the statutory notice procedures which they contend have not been carried out. Currently pending is the defendant's motion for summary judgment. For the reasons that follow, the motion is granted.

Plaintiffs Joseph and Mary Dickerson failed to submit income tax returns for the 1983, 1984 and 1985 tax years. Therefore, the IRS

determined their tax liabilities for them and issued notices of deficiency to them. As reflected by IRS records, the notices were sent to Mr. Dickerson on September 14, 1987 for 1983, November 2, 1987 for 1984, and October 17, 1988 for 1985. Notices were sent to Mrs. Dickerson on June 8, 1987 for 1984, and August 8, 1988 for 1985.

The Dickerson concededly failed to file petitions in the Tax Court and accordingly deficiencies were assessed for their tax liabilities for the delinquent

years. On July 27, 1989, final notices of intention to levy were sent by certified mail to the Dickersons. These notices notified the Dickersons of, among other things, the following actions which the IRS might take should the taxpayers fail to pay the amount due within thirty days:

> If you do not comply with this notice, we may take enforcement action without any further notice to you. We may file a notice of Federal tax lien which is public notice to your creditors that a tax lien exists against your property. We may serve a notice of levy on your employer for salary or wages you are due, and may levy on any bank accounts, receivables, commissions, or other kinds of

income you have. We may also seize your property or rights to property, such as automobiles, and sell it to satisfy your tax liability.

That both taxpayers received these final notices of intention to levy is evidenced by the IRS's receipt of acknowledging letters dated July 31, 1989 in which the Dickersons claimed they were not "persons" within the meaning of 26 U.S.C. Sec. 6331(d), the statutory provision requiring notice to a taxpayer before levy.

On September 5, 1989, notices of levy were issued to the

plaintiffs' employer, The Carrier Corporation, to seize non-exempt wages of plaintiffs. Notices of federal tax lien were filed in the Registrar's Office for Coffee County, Tennessee on September 18, 1989.

Plaintiffs first allege that the United States wrongfully levied on their property because they did not follow proper collection procedures outlined in the Code. Under 26 U.S.C. Sec. 7426(a), only a third party may bring an action for wrongful levy against the

United States:

> . . . If a levy has been made on property or property has been sold pursuant to a levy, any person (Other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States ...

Thus, plaintiffs have no standing to bring a wrongful levy action.

Under 28 U.S.C. Sec. 2410, a taxpayer may challenge the procedural regularity of a United States tax lien, but not the validity of the underlying tax liability.. Pollack v. U.S., 819

F.2d 144 (6th Cir. 1987). In this case, the IRS carried out all of the statutory requirements for creating valid tax liens. Pursuant to 26 U.S.C. Sec. 6203, the IRS made a formal assessment of the tax due by the Dickersons. Pursuant to the requirements of 26 U.S.C. Sec. 6303(a), the IRS mailed notice of the assessment and demand for payment to the Dickersons at their last known address. Thus, the Government complied with the prerequisites for the creation of a valid tax lien and is entitled to

summary judgment on any claim by plaintiffs under 28 U.S.C. Sec. 2410.

Plaintiffs also complain that the IRS did not give plaintiffs proper notice pursuant to 26 U.S.C. Sec. 6331(d). That section requires:

(d) Requirement of notice before levy.-

(1) In general. Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

(2) Ten-day requirement. The notice required under paragraph (1) shall be -

(A) given in person

(B) left at the dwelling or usual place of business of such person, or

(C) sent by certified or registered mail to such person's last known address.

no less than 10 days before the day of the levy.

26 U.S.C. Sec. 6331(d). On July 27, 1989, the required final notices, including notice of intention to levy, were sent by the IRS to the Dickersons. That the Dickersons received the notices is undeniable by virtue of their acknowledging letters of July 31,

1989.

26 U.S.C. Sec. 6335 deals with the sale of seized property and provides of notice to the property owner of the seizure of his property as soon as practicable after the seizure. Although the IRS has apparently established liens on plaintiffs' real and personal property, plaintiffs do not allege in their complaint that any of this property has been seized other than plaintiffs' wages. Those wages are, of course, not amenable to sale. There are no

facts upon which plaintiffs can base a claimed violation of 26 U.S.C. Sec. 6335.

Plaintiffs' complaint also alleges that the IRS has made unauthorized disclosures of plaintiffs' return and/or return information to third persons. Plaintiffs identify these disclosures as occurring on September 5, 1989 and September 18, 1989 and "other times unknown to the plaintiffs." Apparently plaintiffs refer to the Notices of Levy filed on September 5, 1989

with plaintiffs' employer and the Notices of Federal Tax Liens recorded on September 18, 1989 at the Register of Deeds Office.

26 U.S.C. Sec. 6103(k)(6) allows the Secretary to prescribe the circumstances under which certain disclosures can be made. The regulations promulgated by the Secretary allow the IRS to disclose return information

> (6) To establish or verify the financial status or condition and location of the taxpayer against whom collection activity is or may be directed, to locate assests in which the taxpayer has an interest, to ascertain the amount of any liability described

in subparagraph (3) of this paragraph to be collected, or otherwise to apply the provisions of the Code relating to establishment of liens against such assests or levy on or seizure or sale of the assests to satisfy any such liability.

Treas. Reg. Sec. 301.6103(k)(6)-1(b). Plaintiffs have not alleged any facts which would support a conclusion that the IRS made any disclosures other than those necessary to effectuate levies and liens and the possible sale of assets. Accordingly, the defendant is entitled to summary judgment on plaintiffs' claim of unauthorized disclosures.

In light of the foregoing, defendant's motion for summary judgment is granted and this action is dismissed. Plaintiffs' motion to strike defendant's exhibits [Court File #57] is not well taken and is denied. Any other pending motions are denied as moot.

Order accordingly.

James H. Jarvis

James H. Jarvis
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF TENNESSEE
WINCHESTER DIVISION

FILED MAY 20 8 14 AM'91

U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY KJ DEP. CLERK

JOSEPH CARL DICKERSON and wife, MARY ELIZABETH DICKERSON,	)	
Plaintiffs	)	Civ. 4-90-001
v.	)	
UNITED STATES OF AMERICA,	)	
Defendants	)	

ORDER

For the reasons set forth in the Memorandum Opinion this day

passed to the Clerk for filing, it is hereby ORDERED that defendant's motion for summary judgment is GRANTED and this action is DISMISSED. Plaintiffs' motion to strike defendant's exhibits [Court File #57] is not well taken and is DENIED. Any other pending motions are DENIED AS MOOT.

ENTER:

J. H. Jarvis,
James H. Jarvis
UNITED STATES DISTRICT JUDGE

Date 5-20-91
Order Book 22 Page 47

No. 89-5740

FILED APR 17 1990

LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DAVID L. WILLIAMS,

Plaintiff-Appellant,

v. ORDER

UNITED STATES OF AMERICA; INTERNAL REVENUE SERVICE; LAWRENCE B. GIBBS, COMM. Internal Revenue Service; WILLIAM PALZKILL, District Director Internal Revenue Service; C.E. SMALLEY, Chief, Special Procedures Internal Revenue Service; STEPHEN PECK, Agent Internal Revenue Service;

Defendants-Appellees,

GLEN BRUCE, Graves County Court Clerk; DONNA SEXTON, Graves County Court Deed Clerk; GENERAL TIRE, INC.,

Defendants.

APPENDIX D

Graves County.

However, a careful review of the complaint shows that Williams only requested declaratory and injunctive relief. Therefore, the district court should not have dismissed the defendants who were IRS employees on the basis of qualified immunity. See Littlejohn v. Rose, 768 F.2d 765, 772 (6th Cir.), cert. denied, 475 U.S. 1045 (1985). The qualified immunity defense is also inapposite because Williams sued the I.R.S. employees in their official capacities. Id.

motion under Fed. R. Civ. P. 59, this court generally considers only whether the district court abused its discretion by not changing its original order. Huff v. Metropolitan Life Ins. Co., 675 F.2d 119, 122-123 n.5 (6th Cir. 1982). However, a de novo review is appropriate when the district court bases its decision on an erroneous legal doctrine. Id. In the instant case, Williams now concedes that the court did not abuse its discretion by dismissing his employer and the clerks of

William's timely motion to reconsider that dismissal under Fed. R. Civ. P. 59 (West 1989). Williams filed a timely notice of appeal from this second order on June 13, 1989. Williams now states that he is not challenging his underlying tax liability. Nevertheless, he maintains that the dismissal of his case was inappropriate because the appellees did not follow correct procedures when they placed a tax lien on his property.

In reviewing the denial of a

relief to prevent these appellees from enforcing a levy on his wages and a lien on real property that he owned in Graves County, Kentucky. Williams also sued his employer as well as the county clerk and a records clerk in Graves County because they cooperated with the appellees in their attempt to collect his taxes.

On April 25, 1989, the district court entered an order that granted the defendants' motion to dismiss. On June 1, 1989, the court entered an order that denied

The appellees are the United states, the Internal Revenue Service and several I.R.S. employees who were used in their official capacities. William's case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the record and the briefs, the panel unanimously agrees that oral argument is not needed in this case. Fed. R. App. P. 34(a).

In his complaint, Williams sought declaratory and injunctive

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BEFORE: GUY and NORRIS, Circuit Judges; and CONTIE, Senior Circuit Judge.

David L. Williams is a pro se taxpayer who appeals the district court's order that denied his motion to reconsider the dismissal of a case that he had filed under 28 U.S.C. Sec. 1340 (Supp. 1989) and 28 U.S.C. Sec. 2410 (1978).

"[A]ctions against parties in their official capacities are, essentially, actions against the entities for which the officers are agents." Id. Thus, William's complaint effectively presents a claim only against the United States insofar as it involves actions that were taken by the IRS and its employees as agents of the United States. See Atkinson v. O'Neill, 867 F.2d 589, 590 (10th Cir. 1989); cf. 26 U.S.C. Sec. 7422(c) (1989). The IRS and its employees are properly dismissed

from the case for this reason. See Deleeuw v. I.R.S., 681 F. Supp. 402, 403-04 (E.E. Mich. 1987).

The United States is the proper party in interest in an action to quiet the title to William's property because the United States is the lien holder on that property. "It is well settled that the United States as a sovereign is immune from suit unless it expressly waived such immunity and that the bar of sovereign immunity cannot be avoided simply by naming officers

and employees of the United States as defendants." Ecclesiastical Order of the Ism of Am, Inc. v. Chasin, 845 f.2d 113, 115 (6th Cir. 1988) (citations omitted). Sovereign immunity is not waived by the district court's general jurisdiction under 28 U.S.C. Sec. 1340. Essex v. Vinal, 499 F.2d 226, 231' (8th Cir. 1974), cert. denied, 419 U.S. 1107 (1975). However, sovereign immunity is not a bar in the present case because 28 U.S.C. Sec. 2410 creates a limited waiver of immunity in cases that challenge

the procedural regularity of a lien, rather than the amount of the underlying tax liability. See Pollack v. United States, 819 F.2d 144, 145 (6th Cir. 1987).

The district court found that the gravamen of Williams's complaint was a challenge to the assessment of his taxes and that these taxes must be paid before the court would have jurisdiction over his case. See 26 U.S.C. Sec 7422(a) (1989); Pollack, 819 F.2 at 145-46. However, Williams asserts that he did not challenge his underlying

tax liability. Moreover, a review of his complaint shows that Williams challenged the procedural regularity of the defendants' lien on four separate grounds. These allegations are sufficient to support a waiver of immunity under 28 U.S.C. Sec. 2410 and to establish the court's jurisdiction despite the prepayment requirements of 26 U.S.C. Sec 7422(a).

Williams first argues that the defendants failed to prepare a substitute return in calculating his tax liability. The IRS is

authorized to prepare a substitute return of taxpayers who fail or refuse to submit returns on their own. 26 U.S.C. Sec. 6020(a) (1989). However, William's argument on this point is unavailing because the permissive language of Sec. 6020(a) did not require the defendants to prepare a return in his case. Cf. United States v. Verkuilen, 690 f. 2d 648, 657 (7th Cir. 1982).

Second, Williams argues that the defendants did not send him a "Notice of Deficiency" regarding

his tax liability for 1983. See 26 U.S.C. Sec. §212(a) (1989). However, the notice required by Sec. §212(a) is sufficient "when it advises the taxpayer that the Commissioner has determined a deficiency, when it tells the taxpayer the amounts of the deficiency and the years involved, and when the taxpayer is informed of the basis of the Commissioner's action." Gaska v. Commissioner, 800 F.2d 633, 634 (6th Cir. 1986). Williams has attached documentation from the IRS to his complaint that

satisfies each of these requirements.

Third, Williams argues that the defendants did not send him a "Notice of Assessment and Demand" on IRS form 17a. See 26 U.S.C. Sec. 6303(a) does not require any particular form of notice. See Planned Investments, Inc. v. United States, 881 F.2d 340, 343-44 (6th Cir. 1989). This type of notice is sufficient if it demands payment of a specific amount of tax. Id. The notices that Williams attached to his complaint appear to satisfy

this requirement even though they were not prepared on form 17(a). Moreover, the notices appear to satisfy the equity requirements of due process because Williams was adequately advised of the basis of his tax liability and of his opportunities for appeal through his correspondence and meetings with the defendants. Cf. Id.

Finally, Williams argues that the defendants did not prepare an appropriate assessment of his tax liability on IRS form 23(c). See 26 U.S.C. Sec. 6203 (1989). The

district court correctly found that the defendants were not required to use this specific form. Cf. United States v. Berman, 825 f.2d 1053, 1055-56 (6th Cir. 1987). However, the court did not make any findings as to whether the pleadings showed that a formal assessment had been made. Id.

The regulation that prescribes the method for making an assessment provides in pertinent part as follows:

> The district director and the director of the regional service center shall appoint one or more assessment officers. The district

director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment.

26 C.F.R. Sec. 301.6203-1 (1989); See also, Planned Investments Inc., 881 F.2d at 343. The appellees do not argue that such an assessment was made. Instead they argue that "[w]hile an assessment must be made before a lien can be filed or a levy served, . . . , there is no

requirement that a taxpayer receive a copy of the assessment before the IRS moves to collect the taxes due via the lien or levy procedures." See 26 U.S.C. Secs. 6231 and 6331 (1989). This argument is not sufficient to support of dismissal under Fed. R. Civ. P. 12(b) (West 1989). An appropriate assessment is a procedural prerequisite to a tax lien. Cf. Berman, 825 F.2d at 1055-56; United States v. Swarthout, 420 F.2d 831, 834-35 (6th Cir. 1970). William's complaint raises an issue as to

whether a proper assessment was made. His suit cannot be dismissed if this issue has not been resolved. Cf. Essex, 499 F.2d at 230-31.

In summary, Williams concedes that his employer and the county clerks were properly dismissed from this case. It was also proper to dismiss the IRS and its employees because the United States is the real party in interest in this case. The district court had jurisdiction under 28 U.S.C. Sec. 2410 despite the prepayment

requirement of 26 U.S.C. Sec 7422 because Williams challenged the procedural regularity of the defendants' lien rather than the validity of his underlying tax liability. While three of his procedural objections are without merit, his claim that the defendants did not prepare a formal assessment of his taxes is not clearly resolved by the record and is itself sufficient to defeat a motion by the United States to dismiss under Fed. R. Civ. P. 12(b).

For these reasons, the district court's order of dismissal is hereby affirmed with regards to all of the defendants except the United States, and vacated insofar as it dismisses the United States, and the case is hereby remanded for further proceedings. Rules 9(b)(5) & (6), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk